

FILED

OCT 14 2010

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

Northern District of California

Oakland Division

UNITED STATES OF AMERICA,

Plaintiff,

v.

PEDRO VELASQUEZ,

Defendant.

No. CR-10-00423 PJH (DMR)

REPORT AND RECOMMENDATION
REGARDING GUILTY PLEA

The magistrate judge recommends to the district judge that it accept defendant Pedro Velasquez' guilty plea entered in open court on October 14, 2010. Specifically, the defendant pleaded guilty by way of open plea (i.e., not pursuant to a plea agreement) to Count One of the indictment charging him with a violation of 8 U.S.C. § 1326 (illegal reentry following deportation).

The magistrate judge makes the following findings:

1. On the hearing date set forth above, with the assistance of counsel and Spanish language interpreter, the defendant waived his right to enter his guilty plea before a district judge and instead consented to enter his plea in a hearing in magistrate court. Specifically, the magistrate judge advised him that he had a right to plead guilty in district court and that under 28 U.S.C. § 636(b) and Federal Rule of Criminal Procedure 59, he could waive that right and consent to enter his plea in a plea hearing in magistrate court. The magistrate judge also advised him that it would issue a written

REPORT AND RECOMMENDATION
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cc: Copy to parties via ECF, Nichole

UNITED STATES DISTRICT COURT
For the Northern District of California

1 report recommending that the district judge accept the guilty plea, that the district judge would
2 review that recommendation and determine whether to accept the guilty plea, and that the district
3 judge and not the magistrate judge would sentence him. The magistrate judge also advised him of
4 the procedures (also set forth at the end of this recommendation) for challenging the magistrate
5 judge's recommendation. The defendant then waived his right to proceed in district court in open
6 court and in writing and consented to the magistrate judge's conducting the plea hearing.

7 2. The magistrate judge conducted a full plea hearing in the manner set forth in Federal Rule
8 of Criminal Procedure 11. In particular, the magistrate judge reviewed, and the defendant
9 acknowledged that he understood, the following: (a) the nature of each charge and the maximum
10 penalties, as set forth in Fed. R. Crim. P. 11(b)(1) (G)-(L); (b) the effect of the advisory Sentencing
11 Guidelines and 18 U.S.C. § 3553(a), *see* Fed. R. Crim. P. 11(b)(1)(M); and (c) the rights he was
12 waiving by pleading guilty, *see* Fed. R. Crim. P. 11(b)(1) (A)-(F). The magistrate judge also
13 determined that there was a factual basis for the guilty plea. *See* Fed. R. Crim. P. 11(b)(3).

14 3. The magistrate judge also addressed the defendant personally in open court, and
15 determined that the plea was voluntary and did not result from force, threats, or promises. *See* Fed.
16 R. Crim. P. 11(b)(2).

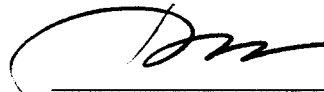
17 4. After the advisements set forth in Rule 11, and summarized here, the defendant pleaded
18 guilty as summarized above. The magistrate judge found that he was fully competent and capable of
19 entering an informed plea, that he was aware of the nature of the charges and the consequences of the
20 guilty plea, and that the guilty plea was knowing and voluntary and supported by an independent
21 factual basis. This court thus recommends to the district judge that it accept the defendant's guilty
22 plea.

23 5. Any party may serve and file specific written objections within fourteen days after being
24 served with a copy of this order. *See* 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59. Failure to file
25 objections within the specified time may waive a party's right to review. *See* Fed. R. Crim. P. 59(b).

1 6. At the parties' request, this court set the matter for further proceedings before the district
2 court on Wednesday, January 5, 2011, at 1:30 p.m.

3 IT IS SO RECOMMENDED.

4 Dated: October 14, 2010



5 DONNA M. RYU
6 United States Magistrate Judge
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